

Rev. Rul. 62-10, 1962-1 C.B. 305, modified Rev. Rul. 69-247.

The filing of an information return on Form 990, Form 990-A or Form 990-P, under section 6033 of the Internal Revenue Code of 1954, by an organization exempt from income tax under section 501(a) of the Code does not start the running of the statute of limitations on assessment of the unrelated business income tax imposed by section 511 of the Code and required to be reported on Form 990-T.

Advice has been requested whether, in view of section 6501(g)(2) of the Internal Revenue Code of 1954, the filing of an information return on Form 990, Form 990-A or Form 990-P, pursuant to the provisions of section 6033 of the Code, by an exempt organization will start the running of the statute of limitations on assessment of the unrelated business income tax which is imposed by section 511 of the Code and required to be reported on Form 990-T.

Section 6501 of the Code, relating to limitations on assessment and collection, provides, in part, as follows:

(a) GENERAL RULE.-Except as otherwise provided in this section, the amount of any tax imposed by this title (Internal Revenue Title) shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) * * * and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

* * *

(g) * * *

(2) EXEMPT ORGANIZATIONS.-If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

Section 6033(a) of the Code provides that every organization exempt from taxation under section 501(a) of the Code, with certain exceptions, shall file an annual return stating specifically the items of gross income, receipts and disbursements and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary of the Treasury or his delegate may by forms or regulations prescribe.

Section 6033(b) provides that every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms

and regulations prescribe, setting forth its gross income, its expenses, its disbursements, its accumulation of income, its aggregate accumulations of income at the beginning of the year, its disbursements out of principal, a balance sheet showing its assets, liabilities and net worth, and the total of contributions and gifts received by it during the year.

Section 1.6033-1(a) of the Income Tax Regulations provides, in part, that (1) every organization exempt from tax under section 501(a), and required to file a return under section 6033 and this section, other than those described in sections 401(a), 501(c)(3), and 501(d), shall file its annual return on Form 990; (2) every organization described in section 501(c)(3), which is exempt from tax under section 501(a), and which is required to file a return under section 6033 and this section, shall file its annual return on Form 990-A; and (3) every employees' trust described in section 401(a), which is exempt from tax under section 501(a), shall file an annual return on Form 990-P.

Section 1.6033-1(i) of the regulations provides that in addition to the other requirements of this section, certain organizations otherwise exempt from tax under section 501(a) and described in section 501(c)(2), (3), (5) or (6) or section 401(a), which are subject to tax on unrelated business taxable income, are also required to file returns on Form 990-T. The section then refers to paragraph (a) of regulations section 1.6012-2 and paragraph (a)(5) of section 1.6012-3 for requirements with respect to such returns.

Section 1.6012-2(e) of the regulations pertains to charitable and other organizations with unrelated business income and provides that such an organization 'shall make a return on Form 990-T for each taxable year if it has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more.' It adds that the filing of a return of unrelated business income does not relieve the organization of the duty of filing other required returns.

The foregoing provisions of the statutes and regulations, taken together, make it clear that an exempt organization which is subject to the unrelated business income tax may be required to file two returns, an information return on either Form 990, Form 990-A, or Form 990-P, depending on the type of organization, and an unrelated business income tax return on Form 990-T.

Section 6501(g)(2) of the Code provides that if a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of the statute of limitations on assessment and collection.

Section 6501(g)(2) applies to the exempt status of organizations which erroneously file information returns in lieu of proper income tax returns. In this connection see Rev. Rul. 60-144, C.B. 1960-1, 636. In the present situation, the organization's right to an exempt status is not in issue. Moreover, an organization is not entitled to the benefits of section 6501(g)(2) of the Code until it has filed such returns as are required of it under section 6033 of the Code and the regulations applicable thereto. Cf., Commissioner v. Lane-Wells Co. and Technicraft Engineering Corporation, 321 U.S. 219, Ct. D. 1602, C.B. 1944, 539, in which the Court held that the filing of a corporate tax return on Form 1120 did not start the statute of limitations running on the time for assessment of personal holding company liability required to be separately reported on Form 1120H.

In view of the foregoing, it is held that the filing of an information return on Form 990, Form 990-A or Form 990-P, pursuant to the provisions of section 6033 of the Code, by an organization exempt from income tax under section 501(a) of the Code does not start the running of the statute of limitation for purposes of assessment of the unrelated business income tax imposed by section 511 of the Code and required to be reported on Form 990-T.